IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2020

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

CMA.No.3489 of 2013

The New India Assurance Company Ltd.,
No.51, Dr.Radhakrishnan Salai,
Chennai. ...Appellant

vs

1.A.Sivakumar
2.N.Elumalai ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 07.08.2013 passed in MACTOP.No.3654 of 2010 on the file of the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mrs.D.Revathi for R1
No appearance for R2

JUDGMENT

The New India Assurance Company Limited, the second respondent in MACTOP.No.3654 of 2010 on the file of the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai, has filed the present appeal. The first respondent filed the said claim petition under Section 166 of the Motor

Vehicles Act, 1988 seeking compensation of Rs.15,00,000/- for the injuries sustained by the him in a road accident that took place on 30.05.2007.

2. The case of the claimants is that on 30.05.2007 at 05.00 AM, when the first respondent/claimant was travelling in the second respondent's Tanker Lorry bearing Regn.No.TN-01-7119 as a helper cum loadman, the driver of the lorry drove the same in a rash and negligent manner and applied sudden break, thereby the lorry was capsized and the first respondent/claimant sustained grievous injuries. According to the claimants, the rash and negligent driving of the driver of the lorry belonging to the second respondent was the cause of the accident and that since the said lorry was insured with the New India Assurance Company Limited, both the owner as well as the insurer are jointly and severally liable to pay compensation to them.

3. The owner of the lorry remained absent before the Tribunal and therefore, he was set exparte. The New India Assurance Company Limited contested the claim petition on all the grounds available to the insured. The learned II Judge, Court of Small Causes / Motor Accident Claims Tribunal, Chennai, awarded a compensation of Rs.12,92,250/- to the claimant together with interest at the rate of 7.5% per annum. The Tribunal also directed the New India Assurance Company Limited to pay the compensation to the claimant. Aggrieved over the order passed by the Tribunal, the New India

Assurance Company Limited has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Heard Mr.M.Krishnamoorthy, learned counsel appearing for the appellant and Mrs.D.Revathi, learned counsel appearing for the first respondent and perused the materials available on record.

5. While deciding the claim petition under Motor Vehicles Act, 1988, the tribunal should examine the terms of the policy produced by the insurer and in the event of denial of liability, a finding should be recorded with regard to the nature of the policy, as to whether it was "Act Policy" or "Package Policy". In the instant case, the tribunal has not given any definite findings in this regard, though the Insurance Company has taken a specific plea that they are not liable to pay any compensation to the claimants, since the policy of the Insurance is only an "Act Policy".

6. In the decision of the Division Bench of this court in ***Royal Sundaram Alliance Insurance Company Limited V.A.Meenakshi*** reported in ***2009(1) TNMAC 249***, the deceased was a passenger in a vehicle and on account of negligence of the driver, the accident took place, leading to the death of the passenger and the legal heirs of the deceased claimed

compensation. The Insurance Company disputed the claim on the ground that the passengers, who travelled in the car, were gratuitous passengers and therefore, the Insurance Company is not liable to pay any compensation. It was also contended by them that on payment of an additional premium under the insurance policy, coverage can be extended to five unnamed persons, for a capital sum of Rs.70,000/- each, in terms of India Motor Tariff(IMT) 16 and therefore, even if the Insurance Company is liable to pay compensation, its liability can be restricted to only Rs.70,000/- and not more that that. After considering the policy and the limits of liability, set out in the Motor Vehicles Act, 1988, the Division Bench held that a comprehensive/package policy covers the risk of the occupants also and therefore, the insurance company cannot escape from its liability to pay compensation.

7. In ***Sagar Chand Phool Chand Jain*** *vs*. ***Santosh Gupta*** reported in ***1985 ACJ 585***, the Delhi High Court held that when the contract of policy describes it as a contract for "private car package policy" and provides for liability to third parties, the insurance company is liable to indemnify the insured in the event of an accident caused by or arising out of the use of the motor car.

8. Under the Indian Motor Tariff (IMT), different types of policies

are issued and they are contained in IMT section 7 (page 107 of IMT). They are

a. Standard form for liability only policy,

b. Standard form for private car package policy.

c. Standard form for two wheeler package policy.

d. Standard form for commercial vehicles package policy.

e. Standard form for motor trade package policy and the like. Each policy is split into different sections to deal with different contingencies and the parties bind themselves to the terms of the clause contained in each section of the policy. For example, the package policy for a private car which is applicable to the present case contains:-

Section I Loss of or damage to the vehicle insured, Section II Liability to third parties, Section III Personal accident cover for owner-driver there are other conditions and limits. In this appeal, we are concerned with the liability of the insurance company in respect of a gratuitous passengers/occupants in a private vehicle (car).

The first policy in Section 6 of IMT is liability only policy or an act only policy. In that the liability to third parties is set out as hereunder:-

LIABILITY TO THIRD PARTIES:

i] Subject to the Limit of liability as laid down in the schedule hereto, the Company will indemnify the insured in the event of accident caused by or arising out of the use of the Motor Vehicle anywhere in India against all sums including claimant's costs and expenses which the insured shall become legally liable to pay in respect of death of or bodily injury to any person so far as it is necessary to meet the requirements of the Motor Vehicles Act.

ii] damage to property other than property belonging to the insured or held in trust or in the custody of control of the insured up to the limit specified in the schedule (emphasis supplied).

9.In the instant case, the specific contention of the insurance company is that the Insurance Policy is an “Act policy” and therefore, the same would not cover helper cum loadman of the lorry. A perusal of the Insurance Policy (Ex.P16) clearly shows that it is only an 'Act policy' and only a 'Comprehensive Policy/Package Policy would cover the liability of the inmates of the lorry and hence the insurance company is not liable to pay compensation.

10. In the facts and circumstances of the present case, the order passed by the Tribunal directing the respondents 1 and 2 therein to pay the award amount though perfectly in order needs modification. This Court is of

the view that the Insurance Company is liable to pay the compensation amount in the first instance to the claimants and later recover the same from the owner of the lorry.

11. In the result,

(i) The Civil Miscellaneous Appeal is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The order passed by the Tribunal is modified.

(iii) The present appellant / Oriental Insurance Company Limited is directed to deposit the entire compensation amount awarded by the Tribunal i.e., Rs.12,92,250/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.3654 of 2010 on the file of the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the lorry bearing Registration No. TN 01 7119 in the manner known to law.

(iv) On such deposit being made, the first respondent/claimant is at liberty to withdraw the same as per the orders passed by the Tribunal after following due process of law. The apportionment made by the Tribunal shall be kept intact.

25.02.2020

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Index : Yes/No
Speaking / Non-speaking order

To

1. The Motor Accidents Claims Tribunal,
   II Court of Small Causes,
   Chennai.
2. The Section Officer,
   V.R.Section,
   High Court,
   Madras.

V.BHAVANI SUBBAROYAN, J.

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